

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1881

To amend title I of the Employee Retirement Income Security Act of 1974 to promote fairness in administration of health insurance and other claims under employee welfare benefit plans and to improve enforcement under such title with respect to such plans.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 28, 1993

Mr. BERMAN (for himself, Mr. FORD of Michigan, Mr. WILLIAMS, and Mr. STARK) introduced the following bill; which was referred to the Committee on Education and Labor

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## A BILL

To amend title I of the Employee Retirement Income Security Act of 1974 to promote fairness in administration of health insurance and other claims under employee welfare benefit plans and to improve enforcement under such title with respect to such plans.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Health Insurance  
5       Claims Fairness Act of 1993”.

1 **SEC. 2. IMPROVEMENTS IN CLAIMS PROCEDURE.**

2 (a) QUALIFIED WELFARE PLAN CLAIM DEFINED.—

3 Section 3 of the Employee Retirement Income Security  
4 Act of 1974 (29 U.S.C. 1002) is amended by adding at  
5 the end the following new paragraph:

6 “(42) The term ‘qualified welfare plan claim’ means  
7 a notification of an employee welfare benefit plan of a  
8 claim for benefits under the plan, or a request for coverage  
9 of items or services under the plan, which—

10 “(A) is in writing or in any other form per-  
11 mitted by the plan, and

12 “(B) is provided to the plan—

13 “(i) by the participant, or

14 “(ii) on behalf of the participant in accord-  
15 ance with the plan by any other person in con-  
16 nection with items or services provided or to be  
17 provided by such other person to the partici-  
18 pant or a beneficiary under the plan.

19 For purposes of this paragraph, any request for  
20 preauthorization for benefits under the plan shall be treat-  
21 ed as a claim for benefits under the plan.”.

22 (b) REVIEW REQUIREMENTS FOR QUALIFIED WEL-  
23 FARE PLAN CLAIMS.—

24 (1) IN GENERAL.—Section 503 of the Employee  
25 Retirement Income Security Act of 1974 (29 U.S.C.  
26 1133) is amended—

1 (A) by inserting “(a) IN GENERAL.—”  
2 after “SEC. 503.”; and

3 (B) by adding at the end the following new  
4 subsections:

5 “(b) REVIEW REQUIREMENTS FOR QUALIFIED WEL-  
6 FARE PLAN CLAIMS.—An employee welfare benefit plan  
7 shall not be treated as complying with the requirements  
8 of subsection (a) unless such plan complies with the fol-  
9 lowing requirements:

10 “(1) TIME LIMIT FOR CONSIDERATION OF COM-  
11 PLETED CLAIMS.—Within 30 days after submission  
12 of a qualified welfare plan claim to the plan in com-  
13 plete form, the plan shall provide to the claimant a  
14 written notice of the plan’s approval or denial of the  
15 claim. Within 5 days after the date of any deter-  
16 mination by the plan to deny the claim, the plan  
17 shall provide the claimant with a written notice set-  
18 ting forth the reasons for the denial, referencing the  
19 policy provision, condition, or exclusion upon which  
20 the denial is based, and including notice of the right  
21 to appeal the denial under paragraph (2). In any  
22 case in which the claim is filed by another person on  
23 behalf of a participant, any notice required to be  
24 provided to the claimant under this paragraph shall

1 not be treated as so provided until such notice also  
2 is provided to the participant.

3 “(2) PLAN’S DUTY TO REVIEW DENIALS UPON  
4 TIMELY REQUEST.—The plan shall review its denial  
5 of the claim if—

6 “(A) within 120 days after receipt of writ-  
7 ten notice from the plan of the denial, a written  
8 request for reconsideration of the claim is filed  
9 with the plan by the claimant (or by the partici-  
10 pant in any case in which the claim was filed  
11 by another person on behalf of the participant),  
12 or

13 “(B) the claim is a claim for benefits  
14 under the plan other than a request for  
15 preauthorization and involves items or services  
16 the aggregate value or expected aggregate value  
17 of which is reasonably estimated to exceed  
18 \$10,000.

19 “(3) TIME LIMIT FOR REVIEW.—The plan shall  
20 complete any review required under paragraph (2),  
21 and shall provide to the claimant (and to the partici-  
22 pant in any case in which the claim was filed by an-  
23 other person on behalf of the participant) written  
24 notice of the plan’s decision on the claim after re-  
25 consideration pursuant to such review—

1           “(A) within 30 days after receipt of the re-  
2           quest for reconsideration, in any case described  
3           in paragraph (2)(A), or

4           “(B) within 30 days after the date of the  
5           initial determination, in any case described in  
6           paragraph (2)(B).

7           “(4) DE NOVO REVIEWS.—Any review required  
8           under paragraph (2)—

9           “(A) shall be de novo,

10           “(B) shall be conducted by an individual  
11           who did not make the initial decision denying  
12           the claim and who is authorized to approve pay-  
13           ment of the claim, and

14           “(C) shall include review by a qualified  
15           physician if the resolution of any issues involved  
16           requires medical expertise or a determination of  
17           medical necessity.

18           “(c) TREATMENT OF REQUESTS TO GROUP HEALTH  
19           PLANS FOR PREAUTHORIZATION.—

20           “(1) IN GENERAL.—This subsection applies in  
21           the case of any qualified welfare plan claim consist-  
22           ing of a request by a participant (or by any other  
23           person on behalf of a participant with respect to  
24           items or services to be provided thereby to the par-  
25           ticipant or a beneficiary) for preauthorization of

1 items or services which is submitted to a group  
2 health plan prior to receipt of such items or services  
3 and which involves—

4 “(A) urgent treatment for a life-threaten-  
5 ing illness or condition,

6 “(B) a high-risk pregnancy, or

7 “(C) items or services the aggregate value  
8 or expected aggregate value of which is reason-  
9 ably estimated to total at least \$20,000.

10 “(2) SHORTENED TIME LIMIT FOR CONSIDER-  
11 ATION OF REQUESTS FOR PREAUTHORIZATION.—

12 Notwithstanding subsection (b)(1), a group health  
13 plan shall approve or deny any qualified welfare plan  
14 claim consisting of a request for preauthorization de-  
15 scribed in paragraph (1) before 10 days (3 days if  
16 the request involves urgent treatment for a life-  
17 threatening illness or condition) after submission of  
18 the claim to the plan, irrespective of the complete-  
19 ness of the claim.

20 “(3) AUTOMATIC REVIEW.—The plan shall re-  
21 view any determination to deny a request for  
22 preauthorization described in paragraph (1) before 3  
23 days after the date of the initial determination. Any  
24 such review shall be conducted in accordance with

1 the requirements of subsection (b)(4) as if the re-  
2 quest were a claim to which such subsection applies.

3 “(4) EXPEDITED EXHAUSTION OF PLAN REM-  
4 EDIES.—Upon completion of the review required  
5 under paragraph (3), the request for  
6 preauthorization shall be treated as a qualified wel-  
7 fare plan claim with respect to which all remedies  
8 under the plan provided pursuant to this section are  
9 exhausted for purposes of further action under this  
10 part.

11 “(5) DENIAL OF PREVIOUSLY AUTHORIZED  
12 CLAIMS NOT PERMITTED.—In any case in which a  
13 group health plan approves the request of any per-  
14 son for preauthorization described in paragraph  
15 (1)—

16 “(A) the plan may not subsequently deny  
17 any claim by such person for any items or serv-  
18 ices involved, unless the plan makes a showing  
19 of intentional misrepresentation by such person  
20 of a material fact, and

21 “(B) if any claim referred to in subpara-  
22 graph (A) is denied in violation of subpara-  
23 graph (A), all remedies under the plan provided  
24 pursuant to this section with respect to such

1 claim shall be treated as exhausted for purposes  
2 of further action on the claim under this part.

3 “(d) TIME LIMIT FOR DETERMINATION OF INCOM-  
4 PLETENESS OF CLAIM.—For purposes of this section, a  
5 qualified welfare plan claim shall be treated as filed in  
6 complete form for purposes of subsection (b)(1) as of 10  
7 days (3 days in the case of any such claim which involves  
8 urgent treatment for a life-threatening illness or condition  
9 or a high-risk pregnancy) after the date of the submission  
10 of the claim, unless, within such period, the plan provides  
11 to the claimant (and to the participant in any case in  
12 which the claim was filed by another person on behalf of  
13 the participant) a written notice of any required matter  
14 remaining to be filed in order to complete the claim which  
15 includes any forms necessary to complete the claim. Any  
16 filing of matter requested by the plan pursuant to this  
17 paragraph shall be treated for purposes of this section as  
18 an initial filing of the claim.

19 “(e) ADDITIONAL NOTICE AND DISCLOSURE RE-  
20 QUIREMENTS FOR GROUP HEALTH PLANS.—In the case  
21 of a denial by a group health plan of a qualified welfare  
22 plan claim—

23 “(1) if the denial is based in whole or in part  
24 on a determination that the claim exceeds reim-  
25 bursement rates based on reasonable and customary



1 charges, the notice provided pursuant to subsection  
2 (a)(1) shall set forth the factual basis for such de-  
3 termination,

4 “(2) if the denial is based in whole or in part  
5 on exclusion of coverage with respect to items or  
6 services because such items or services are deter-  
7 mined to comprise an experimental treatment or in-  
8 vestigatory procedure, such notice shall set forth the  
9 medical basis for such determination and a descrip-  
10 tion of the process used in making such determina-  
11 tion, and

12 “(3) if the denial is based in whole or in part  
13 on a determination that the treatment is not medi-  
14 cally necessary, such notice shall set forth the medi-  
15 cal basis for such determination and a description of  
16 the process used in making such determination.

17 “(f) RECORDS MAINTENANCE REQUIREMENTS.—  
18 Each group health plan shall—

19 “(1) record and maintain data relating to all  
20 qualified welfare plan claims, for which files are  
21 pending, or were pending and are closed, during the  
22 current plan year and the 2 preceding plan years, in  
23 such form and manner as is necessary to enable the  
24 plan to readily retrieve, with respect to each claim,

1 the claim number, the line of coverage, the date of  
2 loss, and the date of payment,

3 “(2) construct and maintain, with respect to  
4 each such claim, a file containing in detail such doc-  
5 umentation as is necessary to permit reconstruction  
6 of the plan’s activities in relation to the claim, and

7 “(3) ensure that each document contained in  
8 each such file indicates the date it was received by  
9 the plan, the date it was processed by the plan, and  
10 the date on which any copy of such document which  
11 has been mailed by the plan was so mailed.”.

12 (2) EFFECTIVE DATE.—The amendments made  
13 by this subsection shall apply with respect to claims  
14 filed after the date of the enactment of this Act.

15 (c) PROHIBITION OF WAIVER CLAUSES.—

16 (1) IN GENERAL.—Section 503(a) of such Act  
17 (as amended by subsection (b)) is further amend-  
18 ed—

19 (A) by striking “shall”;

20 (B) in paragraph (1), by inserting “shall”  
21 after “(1)”, and by striking “and” at the end;

22 (C) in paragraph (2), by inserting “shall”  
23 after “(2)”, and by striking “claim.” and in-  
24 serting “claim, and”; and

1 (D) by adding after paragraph (2) the fol-  
2 lowing:

3 “(3) may not require any party to waive any  
4 right under the plan or this Act as a condition for  
5 approval of any qualified welfare plan claim under  
6 the plan, except to the extent otherwise specified in  
7 a formal settlement agreement.

8 Any waiver described in paragraph (3) shall be null and  
9 void unless such waiver is included in a formal settlement  
10 agreement.”.

11 (2) EFFECTIVE DATE.—The amendments made  
12 by paragraph (1) shall apply with respect to claims  
13 and requests filed after the date of the enactment of  
14 this Act.

15 (d) QUALIFIED WELFARE PLAN CLAIMS ASSISTANCE  
16 PROGRAM.—

17 (1) IN GENERAL.—Section 503 of such Act (as  
18 amended by the preceding provisions of this section)  
19 is further amended by adding at the end the follow-  
20 ing new subsection:

21 “(f) QUALIFIED WELFARE PLAN CLAIMS ASSIST-  
22 ANCE PROGRAM.—The Secretary shall establish by regula-  
23 tion a qualified welfare plan claims assistance program.  
24 Under the program, the Secretary shall make available to  
25 participants and beneficiaries under employee welfare ben-

1   efit plans ongoing assistance in the resolution of qualified  
2   welfare plan claims. Such assistance shall include, but not  
3   be limited to, reviewing denials of claims, assisting in ap-  
4   peals, contacting employee welfare benefit plans and insur-  
5   ance contractors on behalf of participants and bene-  
6   ficiaries, assisting participants and beneficiaries in obtain-  
7   ing plan documents, and referring of cases for appropriate  
8   enforcement action.”.

9           (2) ESTABLISHMENT OF PROGRAM.—The Sec-  
10   retary of Labor shall establish the qualified welfare  
11   plan claims assistance program pursuant to section  
12   503(f) of the Employee Retirement Income Security  
13   Act of 1974 not later than 180 days after the date  
14   of the enactment of this Act.

15       (e) TREATMENT OF SETTLEMENT AGREEMENT AS  
16   TERMS OF PLAN.—

17           (1) IN GENERAL.—Section 503(a) of such Act  
18   (as amended by subsection (d)) is further amended  
19   by adding at the end the following new sentence:  
20   “The terms of any settlement agreement entered  
21   into under the procedures established by an em-  
22   ployee welfare benefit plan pursuant to this sub-  
23   section shall be enforceable under this title as if  
24   such terms were terms of the plan.”.

1           (2) EFFECTIVE DATE.—The amendment made  
2       by paragraph (1) shall apply with respect to settle-  
3       ment agreements entered into after the date of the  
4       enactment of this Act.

5       (f) DEFINITION OF GROUP HEALTH PLAN.—

6           (1) IN GENERAL.—Section 3 of such Act (as  
7       amended by subsection (a)) is further amended by  
8       adding at the end the following new paragraph:

9       “(43) GROUP HEALTH PLAN.—The term ‘group  
10   health plan’ means an employee welfare benefit plan that  
11   provides health care benefits to participants or bene-  
12   ficiaries directly or through insurance, reimbursement, or  
13   otherwise.”.

14       (2) CONFORMING AMENDMENT.—Section  
15   607(1) of such Act (29 U.S.C. 1167(1)) is amended  
16   to read as follows:

17       “(1) GROUP HEALTH PLAN.—For the definition  
18   of ‘group health plan’, see section 3(43).”.

19       (g) DEFINITION OF INSURANCE CONTRACTOR.—Sec-  
20   tion 3 of such Act (as amended by subsection (f)) is fur-  
21   ther amended by adding at the end the following new  
22   paragraph:

23       “(44) INSURANCE CONTRACTOR.—

24           “(A) IN GENERAL.—The term ‘insurance con-  
25   tractor’ for an employee welfare benefit plan means

1 any insurer who has entered into a legally binding  
2 obligation to the plan or plan sponsor to provide  
3 benefits under the plan or to administer claims for  
4 such benefits.

5 “(B) INSURER.—For purposes of subparagraph  
6 (A), the term ‘insurer’ means any person or legal en-  
7 tity engaged in the business of insurance, including  
8 any insurance company, Lloyds insurer, fraternal  
9 benefit society, medical service plan, hospital service  
10 plan, health maintenance organization, prepaid lim-  
11 ited health care service plan, and dental, optometric,  
12 or other similar health service plan. Such term shall  
13 include any agent, broker, or adjuster engaged by  
14 such a person or entity and any third party adminis-  
15 trator engaged to administer benefit claims under an  
16 employee welfare benefit plan. For purposes of this  
17 title, all entities referred to in this subparagraph  
18 which are not employee benefit plans shall be  
19 deemed to be engaged in the business of insurance.”.

20 (h) ADDITIONAL DISCLOSURE REQUIREMENTS FOR  
21 EMPLOYEE WELFARE BENEFIT PLANS.—

22 (1) IN GENERAL.—Section 104(b)(4) of such  
23 Act (29 U.S.C. 1024(b)(4)) is amended in the first  
24 sentence by striking “operated.” and inserting “op-  
25 erated, any insurance contract under which benefits

1 are or were provided, and, in the case of a group  
2 health plan, any fee or reimbursement schedules for  
3 health care providers under the plan.”.

4 (2) EFFECTIVE DATE.—The amendment made  
5 by paragraph (1) shall apply with respect to requests  
6 for any fee or reimbursement schedule which are  
7 made after the date of the enactment of this Act.

8 **SEC. 3. EARLY RESOLUTION PROGRAM.**

9 (a) IN GENERAL.—Part 5 of subtitle B of title I of  
10 the Employee Retirement Income Security Act of 1974 is  
11 amended—

12 (1) by inserting after the heading for part 5 the  
13 following new heading:

14 “Subpart A—General Provisions”;

15 and

16 (2) by adding at the end the following new sub-  
17 part:

18 “Subpart B—Early Resolution Program

19 **“CHAPTER 1—GENERAL PROVISIONS**

20 **“SEC. 521. ESTABLISHMENT OF THE EARLY RESOLUTION**  
21 **PROGRAM; CLAIMS RESOLUTION BOARD.**

22 “(a) ESTABLISHMENT OF PROGRAM.—The Secretary  
23 shall establish and maintain an Early Resolution Program  
24 for employee welfare benefit plans, which shall be adminis-  
25 tered in the Department of Labor by a Claims Resolution

1 Board (hereinafter in this subpart referred to as the  
2 'Board').

3 “(b) IN GENERAL.—The Board shall—

4 “(1) administer the Early Resolution Program  
5 in accordance with regulations of the Board,

6 “(2) develop Program policy and procedures,

7 “(3) maintain a roster of facilitators to act for  
8 the Board in mediation proceedings between parties  
9 conducted under chapter 2, and coordinate the re-  
10 cruitment, selection, and training of such  
11 facilitators,

12 “(4) provide meeting sites, maintain records,  
13 and provide facilitators with administrative support  
14 staff,

15 “(5) establish and maintain attorney referral  
16 panels, and

17 “(6) monitor and evaluate the Program on an  
18 ongoing basis.

19 “(c) MEMBERSHIP.—The Board shall consist of  
20 qualified attorneys or other professionals appointed by the  
21 Secretary who have expertise in the area of employee wel-  
22 fare benefits. The members shall serve for contempora-  
23 neous terms of 3 years and may be reappointed for one  
24 additional term. Vacancies for any term shall be filled for



1 the remainder of such term in the same manner as the  
2 original appointment. Of the members of the Board—

3 “(1) 2 members shall represent the interests of  
4 employee welfare benefit plans and insurance con-  
5 tractors,

6 “(2) 2 other members shall represent the inter-  
7 ests of plan participants and beneficiaries, and

8 “(3) the remaining 2 members shall be experi-  
9 enced in mediation and conciliation procedures.

10 No member of the Board may otherwise serve as an em-  
11 ployee of the United States, any State, or any political  
12 subdivision of a State. Not more than 3 members shall  
13 be of the same political party. Members of the Board shall  
14 serve without pay, except that each member shall receive  
15 travel expenses, including per diem in lieu of subsistence,  
16 in accordance with sections 5702 and 5703 of title 5,  
17 United States Code. The Board shall elect one member  
18 to serve as Chairman.

19 “(d) EXECUTIVE DIRECTOR AND STAFF.—The Sec-  
20 retary shall provide the Board with such administrative  
21 staff and support services as the Secretary considers nec-  
22 essary and appropriate. The administrative staff shall be  
23 headed by an Executive Director appointed by the Board.  
24 The Executive Director shall serve as the chief executive  
25 officer of the Board and in such capacity shall, with the

1 assistance of such staff, conduct case intake under the  
2 Program and otherwise assist the Board in carrying out  
3 its functions. The Executive Director shall be paid at the  
4 rate equivalent to the maximum rate for GS-14 of the  
5 General Schedule.

6 “(e) QUORUM.—Four members of the Board shall  
7 constitute a quorum necessary for business, and four af-  
8 firmative votes shall be necessary for action.

9 **“SEC. 522. ELIGIBILITY OF CASES FOR SUBMISSION TO**  
10 **EARLY RESOLUTION PROGRAM.**

11 “(a) CASE CRITERIA.—A dispute may be submitted  
12 to the Early Resolution Program only if the following re-  
13 quirements are met with respect to such dispute:

14 “(1) PARTIES.—The dispute consists of an as-  
15 sertion by an individual of one or more claims, based  
16 on alleged coverage as a participant or beneficiary  
17 under an employee welfare benefit plan, against the  
18 plan, one or more insurance contractors for such  
19 plan, or both, and a denial of such claims by such  
20 plan, any such insurance contractor, or both.

21 “(2) NATURE OF CLAIM.—Each claim consists  
22 of—

23 “(A) a qualified welfare plan claim; or

24 “(B) a claim arising out of the failure or  
25 refusal by the plan or by an insurance contrac-

1           tor for the plan to comply with the claimant's  
2           request for information or documents the dis-  
3           closure of which is required under this title (in-  
4           cluding any claim of entitlement to disclosure  
5           based on colorable claims to rights to benefits  
6           under the plan).

7           “(3) SUBMISSION AFTER EXHAUSTION OF PLAN  
8           REMEDIES AND IN LIEU OF COMMENCEMENT OF  
9           CIVIL ACTION.—The claimant has received a final  
10          determination regarding the claim under the plan's  
11          claims procedure under section 503, or has otherwise  
12          exhausted all remedies under the plan provided pur-  
13          suant to section 503, and no action has been com-  
14          menced by the claimant under section 502 asserting  
15          a claim which is asserted by the claimant in the  
16          dispute.

17          “(b) REPRESENTATION IN CASES OF INCOM-  
18          PETENCY.—Any claimant who is unable to have a basic  
19          understanding of the Program or its process may be rep-  
20          resented during the proceedings by a legal guardian or  
21          other court-appointed representative.

22          “(c) NOTICE OF PROGRAM AVAILABILITY.—Each  
23          employee welfare benefit plan shall provide, as part of its  
24          claims review procedure established pursuant to section  
25          503(a), that claimants taking part in such procedure will

1 be informed during such procedure of the availability of  
2 the Early Resolution Program.

3 **“SEC. 523. FACILITATORS.**

4 “(a) RECRUITMENT.—The Board shall recruit indi-  
5 viduals to serve as facilitators under the Early Resolution  
6 Program from individuals who have the requisite expertise  
7 for such service.

8 “(b) CRITERIA.—In selecting individuals to serve as  
9 facilitators, the Board shall consider the following:

10 “(1) the individual’s experience in dispute reso-  
11 lution.

12 “(2) the individual’s ability to act impartially;

13 “(3) the individual’s ability to perform evalua-  
14 tions quickly and to present them in nontechnical  
15 terms; and

16 “(4) the individual’s experience in employee  
17 benefit law and, to the extent that the individual’s  
18 service will relate to group health plans, the individ-  
19 ual’s expertise pertaining to medical or disability  
20 issues;

21 “(c) TRAINING OF FACILITATORS.—The Board shall  
22 provide a training program for all new facilitators. The  
23 curriculum shall include the procedures of the Program,  
24 relevant ethical obligations, and skills in mediation and  
25 conciliation necessary for effective alternative dispute res-

1 olution in the applicable proceedings. A facilitator may  
2 serve only upon completion of such training program.

3 “(d) ASSIGNMENT OF FACILITATORS TO CASES.—  
4 Upon submission of a claim to mediation proceedings  
5 under chapter 2, the Board shall appoint a facilitator  
6 through a random selection procedure which shall be pre-  
7 scribed in regulations of the Board.

8 **“SEC. 524. COMPENSATION OF FACILITATORS.**

9 “Facilitators serving in the Early Resolution Pro-  
10 gram may, at their election, serve on a pro bono basis or  
11 be compensated at a fixed fee to be established by the  
12 Board. The Board shall provide for additional compensa-  
13 tion for follow up proceedings. Each facilitator shall re-  
14 ceive travel expenses, including per diem in lieu of subsist-  
15 ence, in accordance with sections 5702 and 5703 of title  
16 5, United States Code.

17 **“SEC. 525. ROLE OF ATTORNEYS.**

18 “(a) REPRESENTATION.—Parties may participate  
19 pro se or be represented by attorneys throughout the me-  
20 diation proceedings under the Early Resolution Program.

21 “(b) REFERRALS.—The Board shall maintain attor-  
22 ney referral panels (both fee-paying and pro bono) and  
23 referral information regarding other sources of legal as-  
24 sistance. Such panels shall consist of attorneys who are

1 experienced in relevant employee benefit law and willing  
2 to represent the parties referred to them.

3 **“CHAPTER 2—MEDIATION OF DISPUTES**

4 **“SEC. 531. INITIATION OF PROCEEDINGS.**

5 “(a) FILING OF ELECTION.—The proceedings under  
6 the Early Resolution Program shall be in the form of me-  
7 diation conducted in accordance with this chapter.

8 “(b) AGREEMENT TO PARTICIPATE.—

9 “(1) ELECTION BY CLAIMANTS.—A claimant  
10 may elect participation in mediation proceedings  
11 under this chapter only by entering into a written  
12 agreement (including an agreement to comply with  
13 the rules of the Program and consent for the Board  
14 to contact the employee welfare benefit plan and any  
15 insurance contractor involved regarding the agree-  
16 ment), by releasing plan records to the Program for  
17 the exclusive use of the facilitator assigned to the  
18 mediation, and by paying to the Board a nonrefund-  
19 able filing fee of \$100. Such fee shall be deposited  
20 as miscellaneous receipts in the general fund of the  
21 Treasury and is hereby appropriated solely for pur-  
22 poses of administering this chapter. The fee may be  
23 waived in cases of hardship, under standards which  
24 shall be prescribed by the Board by regulation.

1           “(2) PARTICIPATION BY PLANS AND INSURANCE  
2       CONTRACTORS.—Each party whose participation in  
3       the mediation proceedings has been elected by a  
4       claimant pursuant to paragraph (1) shall participate  
5       in, and cooperate fully, in the proceedings. The  
6       Board shall provide each such party with a copy of  
7       the participation agreement described in paragraph  
8       (1), together with a written description of mediation  
9       under the Early Resolution Program. Each such  
10      party shall submit such copy of the agreement, to-  
11      gether with such party’s authorized signature sig-  
12      nifying receipt of notice of the agreement, to the  
13      Board, shall include in such submission to the Board  
14      a copy of the written record of the claims procedure  
15      completed by the plan or insurance contractor pur-  
16      suant to section 503 with respect to the dispute and  
17      all relevant plan documents, and shall pay the Board  
18      a nonrefundable filing fee of \$100. Such fee shall be  
19      deposited as miscellaneous receipts in the general  
20      fund of the Treasury and is hereby appropriated  
21      solely for purposes of administering this chapter.  
22      The relevant documents shall include all documents  
23      under which the plan is or was administered or oper-  
24      ated, including copies of any insurance contracts  
25      under which benefits are or were provided and, in

1 the case of a group health plan, any fee or reim-  
2 bursement schedules for health care providers re-  
3 quested by the facilitator.

4 **“SEC. 532. THE MEDIATION PROCEEDINGS.**

5 “(a) IN GENERAL.—A mediation proceeding under  
6 this chapter shall be conducted by facilitators recruited,  
7 trained, and assigned by the Board under section 523 and  
8 in accordance with fair and equitable procedures to be pre-  
9 scribed by the Board which shall be subject to the require-  
10 ments of this chapter.

11 “(b) ANALYSIS STAGE.—In the commencement of the  
12 mediation proceedings with respect to any dispute, the  
13 facilitator assigned to the dispute shall—

14 “(1) identify the necessary parties,

15 “(2) confirm that the case is eligible for medi-  
16 ation under this chapter,

17 “(3) ensure that each party is informed of  
18 available legal representation, including such services  
19 as may be available free of charge under legal assist-  
20 ance programs,

21 “(4) set a conference date,

22 “(5) at the option of the facilitator, request po-  
23 sition papers from the parties of not more than 10  
24 pages in length, if the facilitator determines that



1       such papers are needed to clarify the parties' posi-  
2       tions and issues in dispute, and

3               “(6) analyze the record of the claims procedure  
4       conducted pursuant to section 503 and any position  
5       papers submitted by the parties, with appropriate  
6       legal assistance provided by the Secretary, to deter-  
7       mine if further case development is needed to clarify  
8       the legal and factual issues in dispute, and whether  
9       there is any need for additional information and doc-  
10      uments, and request the parties to present any such  
11      needed information and documents.

12      “(c) EVALUATION STAGE.—Upon completion of the  
13      procedures described in subsection (b), the mediation pro-  
14      ceedings shall proceed as follows:

15              “(1) COMMENCEMENT OF CONFERENCE.—The  
16      facilitator shall convene a conference between the  
17      parties. Each party shall be given the opportunity to  
18      make a statement summarizing the facts, issues, and  
19      arguments in support of such party's position, and  
20      present, or inform the facilitator of, any additional  
21      evidence such party considers to be relevant to the  
22      evaluation.

23              “(2) NEUTRALITY OF FACILITATOR.—The  
24      facilitator shall maintain a neutral stance between  
25      the parties.

1           “(3) PREPARATION OF SETTLEMENT AGREE-  
2           MENT.—If settlement is reached, the facilitator shall  
3           assist in the preparation of a written settlement  
4           agreement (which shall remain confidential at the  
5           option of the parties) and shall ensure that the par-  
6           ties understand the terms of the settlement.

7           “(4) EVALUATION UPON INITIAL FAILURE TO  
8           REACH SETTLEMENT.—If no settlement is reached,  
9           the facilitator may evaluate for the parties the likely  
10          outcome of further administrative action or litiga-  
11          tion, based on the facilitator’s assessment of the rel-  
12          ative strength of each party’s position. Any such  
13          evaluation by the facilitator shall be treated as a  
14          proceeding communication to which section 536  
15          applies.

16          “(5) FURTHER PROCEEDINGS.—The facilitator  
17          shall then encourage extension of the proceedings if  
18          it is likely to lead to settlement or a substantial nar-  
19          rowing of the issues.

20   **“SEC. 533. APPLICABLE TIME LIMITS.**

21          “(a) IN GENERAL.—The mediation proceedings  
22          under this chapter with respect to any dispute shall be  
23          completed within 180 days after the election to partici-  
24          pate, as follows:

1           “(1) PRESENTATION TO PLANS AND INSURANCE  
2           CONTRACTORS OF CLAIMANT’S SIGNED AGREE-  
3           MENT.—The Board shall present to each party  
4           whose participation in the mediation proceedings has  
5           been elected by the claimant the agreement signed  
6           by the claimant within 10 days after the date of the  
7           claimant’s signature.

8           “(2) SUBMISSION OF RECEIPT BY PLANS AND  
9           INSURANCE CONTRACTORS.—Each party whose par-  
10          ticipation in the mediation proceedings has been  
11          elected by the claimant shall submit within 20 days  
12          after receipt of the signed agreement its authorized  
13          signature signifying receipt of the notice of the  
14          agreement.

15          “(3) ASSIGNMENT OF FACILITATOR.—The  
16          facilitator shall be assigned to the case within 30  
17          days after the date as of which all necessary author-  
18          ized signatures have been secured.

19          “(4) COMPLETION OF ANALYSIS STAGE.—The  
20          facilitator shall complete all procedures required in  
21          the analysis stage described in section 532(a) within  
22          45 days after the facilitator’s assignment to the  
23          case.

24          “(5) COMMENCEMENT OF EVALUATION  
25          STAGE.—The conference conducted under the eval-

1       uation stage described in section 532(b) shall com-  
2       mence not later than the earlier of 60 days after the  
3       date of the assignment of the facilitator or 15 days  
4       after completion of the analysis stage described in  
5       section 532(a).

6       “(b) EXTENSION OF PROCEEDINGS.—The proceed-  
7       ings may be extended for not more than 30 days, but only  
8       at the written request of, or upon the written consent of,  
9       the claimant.

10    **“SEC. 534. LEGAL EFFECT OF PARTICIPATION IN PROCEED-**  
11                    **INGS.**

12       “(a) PROCESS NONBINDING.—Findings and conclu-  
13       sions made in the mediation proceedings under this chap-  
14       ter shall be treated as advisory in nature and nonbinding.  
15       Except as provided in subsection (b), the rights of the par-  
16       ties under subpart A shall not be affected by participation  
17       in the mediation proceedings under this chapter.

18       “(b) RESOLUTION THROUGH SETTLEMENT AGREE-  
19       MENT.—If a case is settled through participation in the  
20       mediation proceedings under this chapter, the facilitator  
21       shall assist the parties in drawing up an agreement which  
22       shall constitute, upon signature of the parties, a binding  
23       contract between the parties, which shall be enforceable  
24       under section 537, and which shall be enforceable under

1 this title as if the terms of such agreement were terms  
2 of the plan.

3 “(c) PRESERVATION OF RIGHTS OF NON-PARTIES.—  
4 The settlement agreement shall not have the effect of  
5 waiving or otherwise affecting any rights to review under  
6 section 502 or any other right under this title or the plan  
7 with respect to any person who is not a party to the settle-  
8 ment agreement.

9 **“SEC. 535. PROCEDURAL RULES.**

10 “(a) INAPPLICABILITY OF FORMAL RULES OF EVI-  
11 DENCE.—Formal rules of evidence shall not apply to medi-  
12 ation proceedings under this chapter. All statements made  
13 and evidence presented in the proceedings shall be admis-  
14 sible in such proceedings. The facilitator shall be the sole  
15 judge of the proper weight to be afforded to each submis-  
16 sion.

17 “(b) INAPPLICABILITY OF OATH REQUIREMENTS.—  
18 The parties to the mediation proceedings under this chap-  
19 ter shall not be required to make statements or present  
20 evidence under oath.

21 **“SEC. 536. CONFIDENTIALITY.**

22 “(a) FACILITATORS.—Except as provided in sub-  
23 sections (d) and (e), a facilitator in a mediation proceeding  
24 under this chapter shall not voluntarily disclose or through  
25 discovery or compulsory process be required to disclose

1 any information concerning any proceeding communica-  
2 tion or any communication provided in confidence to the  
3 facilitator, unless—

4 “(1) all parties to the proceeding and the  
5 facilitator consent in writing, and, if the proceeding  
6 communication was provided by a nonparty partici-  
7 pant, that the participant also consents in writing,

8 “(2) the proceeding communication has already  
9 been made public,

10 “(3) the proceeding communication is required  
11 by statute to be made public, but a facilitator may  
12 make such communication public only if no other  
13 person is reasonably available to disclose the commu-  
14 nication, or

15 “(4) a court determines that such testimony or  
16 disclosure is necessary to—

17 “(A) prevent a manifest injustice,

18 “(B) help establish a violation of law, or

19 “(C) prevent harm to the public health or  
20 safety,

21 of sufficient magnitude in the particular case to out-  
22 weigh the integrity of the proceedings in general by  
23 reducing the confidence of parties in future cases  
24 that their communications will remain confidential.

1       “(b) PARTIES.—A party to a mediation proceeding  
2 under this chapter shall not voluntarily disclose or through  
3 discovery or compulsory process be required to disclose  
4 any information concerning any proceeding communica-  
5 tion, unless—

6               “(1) the communication was prepared by the  
7 party seeking disclosure,

8               “(2) all parties to the proceeding consent in  
9 writing,

10              “(3) the proceeding communication has already  
11 been made public,

12              “(4) the proceeding communication is required  
13 by statute to be made public,

14              “(5) a court determines that such testimony or  
15 disclosure is necessary to—

16                      “(A) prevent a manifest injustice,

17                      “(B) help establish a violation of law, or

18                      “(C) prevent harm to the public health or  
19 safety,

20 of sufficient magnitude in the particular case to out-  
21 weigh the integrity of the proceedings in general by  
22 reducing the confidence of parties in future cases  
23 that their communications will remain confidential,

24              “(6) the proceeding communication is relevant  
25 to determining the existence or meaning of an agree-

1       ment or award that resulted from the proceeding or  
2       to the enforcement of such an agreement or award,  
3       or

4               “(7) the proceeding communication was pro-  
5       vided to or was available to all parties to the pro-  
6       ceeding.

7       “(c) INADMISSIBILITY OF DISCLOSED INFORMA-  
8       TION.—Any proceeding communication that is disclosed in  
9       violation of subsection (a) or (b) shall not be admissible  
10      in any proceeding relating to the issues in controversy with  
11      respect to which the communication was made.

12      “(d) ALTERNATIVE PROCEDURES.—The parties may  
13      agree to alternative confidential procedures for disclosures  
14      by a facilitator. Upon such agreement the parties shall in-  
15      form the facilitator before the commencement of the pro-  
16      ceeding of any modifications to the provisions of sub-  
17      section (a) that will govern the confidentiality of the pro-  
18      ceeding. If the parties do not so inform the facilitator, sub-  
19      section (a) shall apply.

20      “(e) NOTICE OF DEMANDS FOR DISCLOSURE.—If a  
21      demand for disclosure, by way of discovery request or  
22      other legal process, is made upon a facilitator regarding  
23      a proceeding communication, the facilitator shall make  
24      reasonable efforts to notify the parties and any affected  
25      nonparty participants of the demand. In any case in which



1 such disclosure would otherwise be in violation of this sec-  
2 tion, the facilitator may perform such disclosure in accord-  
3 ance with such demand only if each party and affected  
4 nonparty participant who receives such notice consents to  
5 such disclosure within 15 calendar days after the date of  
6 the issuance of such notification.

7 “(f) EXCEPTIONS.—

8 “(1) INFORMATION OTHERWISE DISCLOS-  
9 ABLE.—Nothing in this section shall prevent the dis-  
10 covery or admissibility of any evidence that is other-  
11 wise discoverable, merely because the evidence was  
12 presented in the course of a mediation proceeding  
13 under this chapter.

14 “(2) DOCUMENTATION OF AGREEMENTS OR OR-  
15 DERS.—Subsections (a) and (b) shall have no effect  
16 on the information and data that are necessary to  
17 document an agreement reached or order issued pur-  
18 suant to a mediation proceeding under this chapter.

19 “(3) RESEARCH OR EDUCATIONAL PURPOSES.—  
20 Subsections (a) and (b) shall not prevent the gather-  
21 ing of information for research or educational pur-  
22 poses so long as the parties and the specific issues  
23 in controversy are not identifiable.

24 “(4) DISPUTES BETWEEN FACILITATOR AND A  
25 PARTY.—Subsections (a) and (b) shall not prevent

1 use of a proceeding communication to resolve a dis-  
2 pute between the facilitator in a mediation proceed-  
3 ing under this chapter and a party to or participant  
4 in such proceeding, so long as such proceeding com-  
5 munication is disclosed only to the extent necessary  
6 to resolve such dispute.

7 “(g) CIVIL REMEDIES.—

8 “(1) CIVIL PENALTY.—The Secretary may as-  
9 sess a civil penalty against any person who discloses  
10 information in violation of subsection (a) or (b) in  
11 the amount of three times the amount of the claim  
12 involved.

13 “(2) DISQUALIFICATION FROM SERVICE.—Any  
14 facilitator who discloses information in violation of  
15 subsection (a) shall be disqualified from further  
16 service as a facilitator under this subpart.

17 “(h) DEFINITIONS.—For purposes of this section—

18 “(1) PROCEEDING COMMUNICATION.—The term  
19 ‘proceeding communication’ means any oral or writ-  
20 ten communication prepared for the purposes of a  
21 mediation proceeding under this chapter, including  
22 any memoranda, notes, or work product of the  
23 facilitator, parties, or nonparty participants, except  
24 that such term does not include a written agreement

1 to enter into the proceeding or a final written agree-  
2 ment reached as a result of the proceeding.

3 “(2) IN CONFIDENCE.—The term ‘in con-  
4 fidence’ means, with respect to information, that the  
5 information is provided—

6 “(A) with the expressed intent of the  
7 source that it not be disclosed, or

8 “(B) under circumstances that would cre-  
9 ate the reasonable expectation on behalf of  
10 the source that the information will not be  
11 disclosed.

12 **“SEC. 537. ENFORCEMENT OF SETTLEMENT AGREEMENTS.**

13 “(a) CONFIRMATION; JURISDICTION; PROCEDURE.—  
14 At any time within one year after the date of a settlement  
15 agreement entered into under this chapter any party to  
16 the agreement may apply to the United States district  
17 court in and for the district within which such agreement  
18 was made for an order confirming the agreement. Upon  
19 such application, the court shall grant such an order un-  
20 less the agreement is vacated, modified, or corrected as  
21 prescribed in subsection (b) or (c). Notice of the applica-  
22 tion shall be served upon the adverse party. Upon such  
23 notice, the court shall have jurisdiction of such adverse  
24 party as though such adverse party had appeared gen-  
25 erally in the proceeding. If the adverse party is a resident

1 of the district within which the award was made, such  
2 service shall be made upon the adverse party or such par-  
3 ty's attorney as prescribed by law for service of notice of  
4 motion in any action in the same court. If the adverse  
5 party is a nonresident, the notice of the application shall  
6 be served by the marshal of any district within which the  
7 adverse party may be found in like manner as other proc-  
8 ess of the court.

9 “(b) VACATION; GROUNDS; REHEARING.—The court  
10 may make an order vacating the settlement agreement  
11 upon the application of any party to the agreement if—

12 “(1) the agreement was procured under duress  
13 or by corruption, fraud, or undue means, or

14 “(2) there was evident partiality or corruption  
15 in the facilitator who assisted in the making of the  
16 agreement.

17 “(c) MODIFICATION OR CORRECTION; GROUNDS;  
18 ORDER.—The court may make an order modifying or cor-  
19 recting the settlement agreement upon the application of  
20 any party to the agreement if—

21 “(1) there was a material miscalculation of fig-  
22 ures or a material mistake in the description of any  
23 person, thing, or property referred to in the agree-  
24 ment,

1           “(2) the agreement relates to a matter not sub-  
2           mitted in the conference proceedings, unless it is a  
3           matter not affecting the merits of the agreement  
4           upon the matter submitted, or

5           “(3) the agreement is imperfect in matter of  
6           form not affecting the merits of the controversy.

7           The order may modify and correct the agreement, so as  
8           to effect the intent thereof and promote justice between  
9           the parties.

10          “(d) NOTICE OF MOTIONS TO VACATE OR MODIFY;  
11          SERVICE; STAY OF PROCEEDINGS.—Notice of a motion to  
12          vacate, modify, or correct a settlement agreement made  
13          under this subpart must be served upon the adverse party  
14          or the party’s attorney within 90 days after the settlement  
15          agreement is made. If the adverse party is a resident of  
16          the district within which the agreement is made, such  
17          service shall be made upon the adverse party or the party’s  
18          attorney as prescribed by law for service of notice of mo-  
19          tion in an action in the same court. If the adverse party  
20          is a nonresident, the notice of the application shall be  
21          served by the marshal of any district within which the ad-  
22          verse party may be found in like manner as other process  
23          of the court. For the purposes of the motion any judge  
24          who may make an order to stay the proceedings in an ac-  
25          tion brought in the same court may make an order, to

1 be served with the notice of motion, staying the proceed-  
2 ings of the adverse party to enforce the agreement.

3 “(e) PAPERS FILED WITH ORDER ON MOTIONS;  
4 JUDGMENT; DOCKETING; FORCE AND EFFECT; EN-  
5 FORCEMENT.—

6 “(1) FILING OF PAPERS.—The party moving  
7 for an order confirming, modifying, or correcting a  
8 settlement agreement made under this chapter shall,  
9 at the time such order is filed with the clerk for the  
10 entry of judgment thereon, also file the following  
11 papers with the clerk:

12 “(A) the agreement, and

13 “(B) each notice, affidavit, or other paper  
14 used upon an application to confirm, modify, or  
15 correct the agreement, and a copy of each order  
16 of the court upon such an application.

17 “(2) DOCKETING OF JUDGMENT.—The judg-  
18 ment shall be docketed as if it were rendered in an  
19 action.

20 “(3) FORCE AND EFFECT; ENFORCEMENT.—  
21 The judgment so entered shall have the same force  
22 and effect, in all respects, as a judgment in an ac-  
23 tion, and shall be subject to all the provisions of law  
24 relating to such a judgment. Such judgment, includ-  
25 ing the terms of the agreement (as confirmed, modi-

1       fied, or corrected), may be enforced as if it had been  
2       rendered in an action in the court in which it is  
3       entered.

4       “(f) APPEALS.—An appeal may be taken from an  
5       order confirming or denying confirmation of a settlement  
6       agreement made under this chapter or modifying, correct-  
7       ing, or vacating such an agreement.”.

8       (b) SCOPE OF COURT ENFORCEMENT IN CASES OF  
9       MEDIATION.—Section 502(a) of such Act (29 U.S.C.  
10      1132(a)) is amended by adding at the end the following  
11      new flush sentences:

12     “The applicability of this subsection to any qualified wel-  
13     fare plan claim shall not be affected by participation in  
14     mediation proceedings under chapter 2 of subpart B re-  
15     garding such claim except to the extent otherwise required  
16     under the terms of any settlement agreement entered into  
17     in such proceedings.”.

18     (c) MANDATORY COMPLIANCE WITH REQUESTS FOR  
19     INFORMATION BY FACILITATORS IN MEDIATION PRO-  
20     CEEDINGS.—Section 502 of such Act (29 U.S.C. 1132)  
21     is amended—

22             (1) in subsection (a)(5), by striking “or” at the  
23             end;

24             (2) in subsection (a)(6), by striking the period  
25             at the end and inserting “; or”;

1           (3) by inserting after subsection (a)(6) the fol-  
2           lowing new paragraph:

3           “(7) by the Claims Resolution Board to collect  
4           any civil penalty under subsection (c)(4).”; and

5           (4) by inserting at the end of subsection (c) the  
6           following new paragraph:

7           “(4) The Claims Resolution Board may assess a civil  
8           penalty against any party to any mediation proceeding  
9           under chapter 2 of subpart B of this part of up to \$1,000  
10          a day from the date of such party’s failure or refusal to  
11          supply relevant plan documents as required under section  
12          531(b)(2) or such additional information or documents as  
13          are requested by the facilitator pursuant to section  
14          532(b)(6).”.

15          (d) ENFORCEMENT OF CIVIL REMEDIES FOR VIOLA-  
16          TIONS OF CONFIDENTIALITY.—Section 502(a) of such Act  
17          (29 U.S.C. 1132(a)) is amended—

18               (1) in paragraph (2), by inserting “or section  
19               536(g)(2)” after “section 409”; and

20               (2) in paragraph (6), by inserting “or section  
21               536(g)(1)” after “(l)”.

22          (e) CLERICAL AMENDMENT.—The table of contents  
23          in section 1 of such Act is amended—

24               (1) by inserting before the item relating to sec-  
25               tion 501 the following:



“Subpart A—General Provisions”;

1       and

2               (2) by inserting before the items relating to  
3       part 6 the following new items:

“Subpart B—Early Resolution Program

“CHAPTER 1—GENERAL PROVISIONS

“Sec. 521. Establishment of the Early Resolution Program; Claims Resolution Board.

“Sec. 522. Eligibility of cases for submission to Early Resolution Program.

“Sec. 523. Facilitators.

“Sec. 524. Compensation of facilitators.

“Sec. 525. Role of attorneys.

“CHAPTER 2—MEDIATION OF DISPUTES

“Sec. 531. Initiation of proceedings.

“Sec. 532. The mediation proceedings.

“Sec. 533. Applicable time limits.

“Sec. 534. Legal effect of participation in proceedings.

“Sec. 535. Procedural rules.

“Sec. 536. Confidentiality.

“Sec. 537. Enforcement of settlement agreements.”.

4       (f) EFFECTIVE DATE AND RELATED RULES.—

5               (1) IN GENERAL.—The Claims Resolution  
6       Board shall issue the initial regulations necessary to  
7       carry out the amendments made by this section not  
8       later than 1 year after the date on which a quorum  
9       of the initial members of the Board are appointed.  
10      The amendments made by this section shall apply  
11      with respect to disputes submitted to the Board  
12      after such 1-year period.

13              (2) APPOINTMENT OF INITIAL MEMBERS.—The  
14      Secretary of Labor shall appoint the initial members

1 of the Claims Resolution Board not later than 180  
2 days after the date of the enactment of this Act.

3 (3) TREATMENT OF CERTAIN COLLECTIVELY  
4 BARGAINED PLANS.—The amendments made by this  
5 section shall not apply with respect to an employee  
6 welfare benefit plan if—

7 (A) such plan is in effect on the date of  
8 the enactment of this Act,

9 (B) such plan is, as of such date, main-  
10 tained pursuant to one or more collective bar-  
11 gaining agreements between one or more em-  
12 ployee organizations and one or more employ-  
13 ers, and

14 (C) the terms of such agreements include,  
15 as of such date, and continue to include there-  
16 after, a provision explicitly providing procedures  
17 for resolution of claims disputes by arbitration,  
18 mediation, or both between participants and  
19 beneficiaries and the plan and (if any) insur-  
20 ance contractors for the plan.

21 **SEC. 4. IMPROVEMENTS IN ENFORCEMENT.**

22 (a) RECOVERY OF DAMAGES FOR FAILURE TO PRO-  
23 VIDE BENEFITS AS REQUIRED UNDER AN EMPLOYEE  
24 WELFARE BENEFIT PLAN.—

1           (1) IN GENERAL.—Section 502(c) of the Em-  
2       ployee Retirement Income Security Act of 1974 (29  
3       U.S.C. 1132(c)) (as amended by the preceding provi-  
4       sions of this Act) is further amended by adding at  
5       the end the following new paragraph:

6       “(5)(A) In any case in which a qualified welfare plan  
7       claim is denied in violation of the terms of the plan or  
8       of this title or in which any provision of this title is vio-  
9       lated with respect to the administration of the plan in con-  
10      nection with such a claim or the processing of such a claim  
11      thereunder, the named fiduciary under the plan and any  
12      insurance contractor for the plan administering such claim  
13      shall be jointly and severally liable to any participant, ben-  
14      eficiary, employer, employee organization, or plan ag-  
15      grieved by such failure or violation for actual damages (in-  
16      cluding compensatory and consequential damages prox-  
17      imately caused by such failure or violation), except that,  
18      subject to subparagraph (B), damages for such failure or  
19      violation shall not include punitive damages.

20      “(B) In any case in which a failure or violation de-  
21      scribed in subparagraph (A) constitutes fraud, each party  
22      liable under subparagraph (A) may, in the court’s discre-  
23      tion, be liable to the plaintiff for punitive or exemplary  
24      damages in addition to damages described in subpara-  
25      graph (A).

1 “(C) A named fiduciary under a multiemployer plan  
2 shall not be liable under this paragraph.

3 “(D) The remedies provided under this paragraph  
4 shall be in addition to remedies otherwise provided under  
5 this section.”.

6 (2) STANDING OF EMPLOYERS, EMPLOYEE OR-  
7 GANIZATIONS, AND PLANS IN ACTIONS FOR FAILURE  
8 TO MEET REQUIREMENTS WITH RESPECT TO BENE-  
9 FIT CLAIMS.—

10 (A) IN GENERAL.—Section 502(a) of such  
11 Act (29 U.S.C. 1132(a)) (as amended by sec-  
12 tion 3(c)) is further amended—

13 (i) in subsection (a)(6), by striking  
14 “or” at the end;

15 (ii) in subsection (a)(7), by striking  
16 the period and inserting “; or”; and

17 (iii) by inserting after subsection  
18 (a)(7) the following new paragraph:

19 “(8) by an employer, an employee organization,  
20 or a plan for the relief provided under subsection  
21 (c)(5).”.

22 (B) CONFORMING AMENDMENT.—Section  
23 502(e)(1) of such Act (29 U.S.C. 1132(e)(1)) is  
24 amended by striking “subsection (a)(1)(B) of  
25 this section” each place it appears and inserting

1 “paragraph (1)(A) (with respect to relief under  
2 subsection (c)(5)), paragraph (1)(B), or para-  
3 graph (7) of subsection (a)”.

4 (b) ACTIONS FOR VIOLATIONS OF STATUTORY RE-  
5 QUIREMENTS.—Section 502(a)(1)(B) of such Act (29  
6 U.S.C. 1132(a)(1)(B)) is amended by inserting “or the  
7 provisions of this title” after “plan” each place it appears.

8 (c) ACTIONS BY PLANS AGAINST FIDUCIARIES.—Sec-  
9 tion 502(a)(2) of such Act (29 U.S.C. 1132(a)(2)) is  
10 amended by striking “beneficiary or fiduciary” and insert-  
11 ing “beneficiary, fiduciary, or plan”.

12 (d) EFFECTIVE DATE.—The amendments made by  
13 this section shall apply with respect to failures occurring  
14 or commencing on or after the date of the enactment of  
15 this Act.

16 **SEC. 5. ATTORNEY'S FEES AND COSTS OF ACTION.**

17 (a) IN GENERAL.—Section 502(g) of the Employee  
18 Retirement Income Security Act of 1974 (29 U.S.C.  
19 1132(g)) is amended—

20 (1) in paragraph (1), by inserting “or (3)”  
21 after “paragraph (2)”; and

22 (2) by adding at the end the following new  
23 paragraph:

24 “(3) In any action or settlement proceeding under  
25 this title with respect to an employee welfare benefit plan

1 by a participant or beneficiary under such plan in which  
2 the participant or beneficiary prevails or substantially pre-  
3 vails, the participant or beneficiary shall be entitled to rea-  
4 sonable attorney's fees and other costs of the action, in-  
5 cluding reasonable expert witness fees, to be paid by the  
6 opposing party. Fees to which the participant or bene-  
7 ficiary is entitled under this paragraph shall be at gen-  
8 erally prevailing hourly rates.”.

9 (b) EFFECTIVE DATE.—The amendments made by  
10 subsection (a) shall apply with respect to failures occur-  
11 ring or commencing on or after the date of the enactment  
12 of this Act.

13 **SEC. 6. CLARIFICATION OF ABILITY OF STATES TO REGU-**  
14 **LATE THE BUSINESS OF INSURANCE.**

15 (a) IN GENERAL.—Section 514(b) of the Employee  
16 Retirement Income Security Act of 1974 (29 U.S.C.  
17 1144(b)) is amended by adding at the end the following  
18 new paragraph:

19 “(9) Subsection (a) shall not apply to any provision  
20 of State law to the extent that such provision—

21 “(A) provides for the establishment or mainte-  
22 nance of any program making available to partici-  
23 pants and beneficiaries ongoing assistance in the  
24 resolution of qualified welfare plan claims under  
25 group health plans, or

1 “(B) provides for the licensing or regulation of  
 2 insurance contractors or provides sanctions against  
 3 insurance contractors for unfair claims settlement  
 4 practices.”.

5 (b) EFFECTIVE DATE.—The amendment made by  
 6 subsection (a) shall apply with respect to violations occur-  
 7 ring on or after the date of the enactment of this Act.

8 **SEC. 7. STUDY OF PREEMPTION PROVISIONS.**

9 (a) STUDY.—The Secretary of Labor (or the Sec-  
 10 retary’s delegate) shall conduct a study on the effects of  
 11 the provisions of section 514 of the Employee Retirement  
 12 Income Security Act of 1974 which provide for the pre-  
 13 emption of State laws relating to employee benefit plans.

14 (b) REPORT.—Not later than one year after the date  
 15 of the enactment of this Act, the Secretary of Labor shall  
 16 submit to the Committee on Education and Labor of the  
 17 House of Representatives and the Committee on Labor  
 18 and Human Resources of the Senate the results of the  
 19 study conducted under subsection (a), together with any  
 20 recommendations for legislative reforms which the Sec-  
 21 retary finds necessary.

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